

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-182720

DATE: February 13, 1975

MATTER OF: A.C.E.S., Inc.

DIGEST:

Protest of Air Force's failure to include Service Contract Act provisions in RFP for aircraft repair/overhaul is untimely under section 20.2(a) of Bid Protest Procedures and Standards, since it was not protested prior to closing date for receipt of proposals, and is not considered significant issue under section 20.2(b), inasmuch as issue has been treated on its merits previously; also protest of allegedly restrictive specifications is untimely, since it was not protested to GAO prior to closing date for receipt of proposals.

By telegram dated November 22, 1974, counsel for A.C.E.S., Inc., protested any award under request for proposals (RFP) F41608-74-R-7172, issued by the San Antonio Air Logistics Center, Kelly Air Force Base, Texas. The RFP sought offers for the furnishing of all plant, labor and equipment for the repair/overhaul of accessory drive gearboxes for various aircraft. The closing date for receipt of proposals was October 15, 1974. On November 12, 1974, the contracting officer notified A.C.E.S., Inc., of his determination that award was going to be made to S.M.S. Instruments, Inc., under the RFP. Award is being withheld pending our disposition of this protest.

A.C.E.S., Inc., outlines its grounds for protest as follows:

"[1.] The Contracting Officer made no attempt to comply with with the mandatory provisions of the Service Contract Act, and accordingly this procurement is invalid.

* * * * *

"[2.] The technical orders and data set forth in the solicitation are completely inadequate for the overhaul and testing of the critical safety-in-flight gearbox that transmits the only source of power to the hydraulic and electrical systems on the F-5E (Freedom Fighter) aircraft. This critical deficiency was called to the Contracting Officer's attention prior to bid opening."

A.C.E.S., Inc., also contends that its first ground of protest is a "significant issue" under section 20.2(b) of our Bid Protest Procedures and Standards (4 C.F.R. § 20.2(b)(1974)). Section 20.2(a) of our Bid Protest Procedures and Standards (4 C.F.R. § 20.2(a)(1974)) states in pertinent part:

"* * * Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. * * *"

However, 4 C.F.R. § 20.2(b) (1974) states:

"(b) The Comptroller General, for good cause shown, or where he determines that a protest raises issues significant to procurement practices or procedures, may consider any protest which is not filed timely."

For what circumstances give rise to the "good cause" or "significant issue" exceptions, see 52 Comp. Gen. 20 (1972).


In Matter of A.C.E.S., Inc., B-181926, January 2, 1975, the protester also protested, after it was notified that it was not going to receive the award, the Air Force's failure to include the Service Contract Act provisions in an RFP asking for offers for the repair/overhaul of the airframe of various aircraft. We held that the protest was untimely under our Bid Protest Procedures and Standards, and that we did not see a need to again treat this issue as significant under section 20.2(b) of our Bid Protest Procedures and Standards (4 C.F.R. § 20.2(b)(1974)), inasmuch as the issue of the absence of Service Contract Act provisions had been treated on its merits previously, i.e., in 53 Comp. Gen. 412 (1973). See, also, Matter of Hayes International Corporation, B-179842, March 22, 1974. For these same reasons, we will not consider this untimely protested issue in the present case.

A.C.E.S., Inc.'s, second ground of protest also concerns alleged defective specifications in the RFP, which A.C.E.S., Inc., brought to the contracting officer's attention by letter dated August 16, 1974. By letter dated August 26, 1974, the contracting officer stated that, in the Air Force's opinion, the questioned specifications were "complete and adequate enough for submission of a proper proposal." Consequently, this ground of protest is

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also untimely and will not be considered on the merits, since it should have been protested to our Office prior to the closing date for receipt of proposals.

In view of the foregoing, we are closing our file in this matter.


Acting Comptroller General
of the United States